



**Rule and Interpretive/Policy Statement Review Checklist**  
(This form must be filled out electronically.)

**This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.**

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-217**

Date last adopted/issued: **July 23, 2002**

Reviewer: **Margaret Partlow**

Date review completed: **January 31, 2004**

Briefly explain the subject matter of the document(s): **This rule explains the department's collection procedures for delinquent liabilities. In particular, the rule discusses tax liens and the department's authority to impose personal liability for sales taxes collected by a seller upon persons who either control or supervise the collection of the tax and hold the same in trust, or are responsible for the filing of returns or the payment to the state of sales taxes held in trust.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	<b>x</b>	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Need:**

YES	NO	
<b>x</b>		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	<b>x</b>	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
	<b>x</b>	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)



<b>x</b>		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)
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Please explain. **The rule discusses collection remedies authorized by several different statutes. As a result, it reduces the need for reviewing multiple documents to ascertain one's responsibilities.**

### 3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	<b>x</b>	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>x</b>	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	<b>x</b>	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
	<b>x</b>	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

### 4. Clarity and Effectiveness:

YES	NO	
<b>x</b>		Is the document written and organized in a clear and concise manner?
<b>x</b>		Are citations to other rules, laws, or other authority accurate? (If no, identify



		the incorrect citation below and provide the correct citation.)
<b>x</b>		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	<b>x</b>	Do changes in industry practices warrant repealing or revising this document?
	<b>x</b>	Do administrative changes within the Department warrant repealing or revising this document?

Please explain. **The rule is clearly written and well-organized.**

**5. Intent and Statutory Authority:**

YES	NO	
<b>x</b>		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
<b>x</b>		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If “no,” identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	<b>x</b>	Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain. **RCW 82.32.300 and 82.01.060 provide the department with the authority to adopt this rule. The rule is consistent with the statutes authorizing it.**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	<b>x</b>	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain. **The Department of Revenue has the exclusive authority for issuing tax warrants that become tax liens for collecting the taxes it administers.**

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	<b>x</b>	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
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<b>x</b>		Does the document result in equitable treatment of those required to comply with it?
	<b>x</b>	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	<b>x</b>	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

**9. LISTING OF DOCUMENTS REVIEWED:** Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

- \***RCW 82.32.210 (Tax warrant--filing--lien--effect)**
- \***RCW 82.32.220 (Execution of warrant--levy upon property--satisfaction)**
- \***RCW 82.32.235 (Notice and order to withhold and deliver property due or owned by taxpayer--bond-- judgment by default)**
- \***RCW 82.32.237 (Notice and order to withhold and deliver--continuing lien--effective date)**
- \***RCW 82.32.145 (Termination, dissolution, or abandonment of corporate or limited liability business--personal liability of person in control of collected sales tax funds)**
- \***RCW 60.28.040 (Tax liens--priority of liens) for public works projects**

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

- \***Warren R. Pretzer v. Dept. of Revenue, BTA Docket No. 46727 (1996) (CEO of corporation found personally liable for collected but unremitted sales tax)**
- \***Stephen Nicholas v. Dept. of Revenue, BTA Docket No. 00-066 (2002) (Department did not make a good faith effort to determine if there was a reasonable means to collect the unpaid sales tax directly from the corporation as required by RCW 82.32.145(5) before piercing corporate veil and issuing assessment against corporate officer personally)**
- \***Robert Wayne Bjur v. Dept. of Revenue, BTA Docket No. 56659 (2002) (Corporate officer found to be personally liable as "responsible person" who "willfully failed to pay or cause to be paid" the trust fund taxes)**

Appeal Division Decisions (WTDs):

- \***Det. No. 97-168, 17 WTD 142 (1998) (Husband and wife appeal trust fund accountability assessment on the basis that the wife is not liable for husband's actions and that the corporate officer husband's failure to remit the collected retail sales tax trust funds was not willful)**
- \***Det. No. 96-271R, 18 WTD 106 (1999) (Individual seeks reconsideration of a determination affirming a tax assessment issued against her in her personal capacity for the unpaid retail sales tax liability of a corporation of which she was an officer)**



- \*Det. No. 98-121, 18 WTD 113 (1999) (Corporate officers protest the assessment of individual liability for retail sales tax collected by the corporation but not remitted to the state)
- \*Det. No. 99-024, 18 WTD 427 (1999) (President of a defunct corporation protests his personal liability for sales tax that the corporation failed to remit)
- \*Det. No. 99-041, 18 WTD 446 (1999) (Chief executive officer and sole shareholder of liquidated corporation protests the assessment of personal liability for retail sales tax collected by the corporation but not remitted to the state)
- \*Det. No. 99-158, 19 WTD 567 (2000) (Taxpayer seeks refund of amount collected pursuant to a tax warrant)
- \*Det. No. 00-143, 20 WTD 170 (2001) (Former President and Secretary of a defunct corporation protest the assessment of trust fund accountability liability)
- \*Det. No. 99-098, 20 WTD 334 (2001) (A former officer of a defunct corporation protests the assessment of personal liability asserted against him for sales tax collected by the corporation but not remitted to the department)
- \*Det. No. 02-0197, 22 WTD 186 (2003) (Former corporate officers of a defunct corporation appeal a trust fund accountability assessment)

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

#### 10. Review Recommendation:

- \_\_\_\_\_ **Amend**
- \_\_\_\_\_ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- x**   **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- \_\_\_\_\_ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

**Explanation of recommendation:** Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

**The rule is clear and effective as written.**



**11. Manager action:** Date: February 19, 2004

AL Reviewed and accepted recommendation

Amendment priority:

- 1
- 2
- 3
- 4